
INTRODUCTION

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A. The Third Geneva Convention

1. Introduction

- 1 The Geneva Convention relative to the Treatment of Prisoners of War is the third of four Conventions adopted by the Diplomatic Conference of Geneva of 1949. It provides a detailed and comprehensive framework for the treatment of prisoners of war, namely members of the armed forces and other defined categories of persons who fall into enemy hands during an international armed conflict.¹ Prisoners of war must at all times be treated humanely, with respect for their persons and their honour. Many provisions in the Third Convention flow from this fundamental principle or seek to put guarantees in place to ensure compliance with it.
- 2 The decision to revise the previous Conventions (dating from 1929) and to establish a fuller legal framework for the protection of victims of armed conflict was prompted by the violence of the Second World War, which was unprecedented in its scope and in the suffering it caused among both combatants and the civilian population. Large numbers of combatants, as well as countless civilians, died in captivity as a result of direct violence, inhumane treatment or the failure to provide for their basic needs. While improvements in the protection afforded by international humanitarian law had been under discussion well before the outbreak of the Second World War, the experiences of that war persuaded the governments participating in the Diplomatic Conference in 1949 to fill some of the gaps in humanitarian treaty law that the Second World War had exposed.
- 3 Over 70 years later, the four Geneva Conventions of 1949 continue to constitute the bedrock of humanitarian law and are among the most important treaties governing the protection of victims of armed conflict, including prisoners of war. The 1949 Conventions rapidly gained broad acceptance by States and, without exception, have always been ratified by them as a set. The four Conventions entered into force on 21 October 1950 after the first two ratifications.² They were ratified by another 74 States in the 1950s and obtained a further 48 ratifications in the 1960s. Ratifications steadily increased in the 1970s and 1980s. A wave of 26 new ratifications occurred in the early 1990s, resulting in particular from the

¹ For details of who falls into these categories, see Article 4.

² Switzerland and Yugoslavia were the first two countries to ratify the Geneva Conventions, on 31 March and 21 April 1950, respectively; see 'Les Conventions de Genève du 12 août 1949 entrent dans le droit positif', *Revue internationale de la Croix-Rouge et Bulletin international des Sociétés de la Croix-Rouge*, Vol. 32, No. 378, June 1950, p. 448. See also the commentary on Article 138, para. 5429.

break-up of the Soviet Union, Czechoslovakia and the former Yugoslavia. With the last few ratifications taking place since the year 2000, the applicability of the Geneva Conventions has become universal, with 196 States Parties at the time of writing.³ They are widely incorporated into military manuals around the world and are generally considered to be part of customary law.⁴

2. Historical background

- 4 Throughout human history, societies have articulated customs and codes, some grounded in religious precepts, to regulate behaviour towards captured soldiers, prohibiting their ill-treatment and summary execution. Some rules governing the treatment of prisoners of war can be found in ancient Greece and Rome and in medieval Europe's chivalric code.⁵ Following the Battle of Badr in 624, Prophet Mohammed instructed his companions to 'observe good treatment towards the prisoners'.⁶ Bushido, the medieval code of honour of Zen Buddhism in Japan, required that prisoners of war be treated humanely.⁷ In the seventeenth century, the Confucian philosopher Butsu Sorai considered that the killing of prisoners of war constituted a crime.⁸ Similar requirements to treat prisoners of war humanely can be found in Hinduism.⁹ There are many other examples.¹⁰ Nonetheless, despite the protections afforded by ancient codes, rules and religious precepts, unrestrained warfare involving attacks on enemy forces and civilians alike, summary execution of prisoners and large-scale destruction of property, religious sites and crops occurred frequently in armed conflicts.¹¹
- 5 The idea of developing an international treaty providing protections for prisoners of war emerged in the eighteenth and nineteenth centuries, as many States began to establish and consolidate professional armies, allowing for 'increased order and discipline' and, in turn, greater military regulation.¹²

³ For the current status of ratification and the dates of ratification or accession by States Parties, visit the ICRC's IHL database at <https://ihl-databases.icrc.org/ihl> or the depositary page of the Swiss Department of Foreign Affairs website at <https://www.fdfa.admin.ch/depositary>.

⁴ See e.g. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, paras 79 and 82.

⁵ Scheipers, p. 3; O'Connell, p. 16, para. 107.

⁶ Al-Dawoody, p. 1011; see also pp. 1010–1014 regarding Islamic schools of thought on Islamic law in relation to prisoners of war.

⁷ O'Connell, p. 18, para. 110.

⁸ *Ibid.* para. 111.

⁹ See Manoj Kumar Sinha, 'Hinduism and international humanitarian law', *International Review of the Red Cross*, Vol. 87, No. 858, June 2005, pp. 285–294, at 291–293.

¹⁰ For a detailed examination of this topic up until 1863, see Gillespie, pp. 103–159. See also the examples analysed in Jules Basdevant, *Deux conventions peu connues sur le droit de la guerre: États-Unis d'Amérique et Grande-Bretagne, 12 mai 1813, Colombie et Espagne, 26 novembre 1820*, Pedone, Paris, 1914, pp. 5–29, and examples of traditional rules of warfare in ICRC, *Spared from the Spear: Traditional Somali Behaviour in Warfare*, 1998, pp. 45–47, and *Under the Protection of the Palm: Wars of Dignity in the Pacific*, 2009, pp. 22–23.

¹¹ See e.g. Hugo Slim, 'Civilians, distinction, and the compassionate view of war', in Haidi Willmot *et al.* (eds), *Protection of Civilians*, Oxford University Press, 2016, pp. 11–28.

¹² Rosas, p. 49.

At the same time, States were entering into bilateral agreements regarding conditions of warfare,¹³ and military manuals were starting to incorporate protections for prisoners of war.¹⁴ A notable early example was the code first prepared by Francis Lieber in 1863 to clarify the laws and customs applicable to the Union Forces of the United States fighting against the Confederate States of America in the American Civil War. The 'Lieber Code', as it became known, prohibited various forms of inhumane treatment of prisoners of war and provided that captivity must not involve intentional suffering or indignity, nor violence used to 'extort the desired information'.¹⁵

- 6 Less than a decade after the adoption of the first Geneva Convention in 1864, Henry Dunant played a key role in the preparation and organization of the Brussels Conference, convened on 17 July 1874 by Czar Alexander II of Russia to consider an international agreement on the laws and customs of war.¹⁶ The 15 participating European States adopted a draft text put forward by the Russian Government, now known as the Brussels Declaration, which included 12 articles on the protection of prisoners of war.
- 7 The Brussels Declaration never became a binding treaty, but many of its provisions were adopted essentially without change by the 1899 Hague Peace Conference.¹⁷ The Regulations annexed to the Hague Conventions of 1899 was the first binding multilateral agreement dealing with prisoners of war.¹⁸ Seventeen articles of the Hague Regulations concern prisoners of war, addressing, among other things, the obligation to treat prisoners humanely and without distinction, to feed and clothe them at least on a par with the soldiers of the Detaining Power and to ensure their speedy repatriation at the end of the conflict.¹⁹ The Regulations also recognize a role for 'relief societies' to assist in the distribution of relief items and in the repatriation of prisoners.²⁰ The Hague Conventions of 1907 did not change these protections substantively.

¹³ For example, during the Napoleonic Wars (1803–15), the United Kingdom and France concluded an agreement allowing for a 'protecting power' to visit prisoners and provide additional food. In 1896, Italy and Ethiopia entered into the Treaty of Addis Ababa, which included a requirement to release all prisoners and for Ethiopia to allow a detachment of the Italian Red Cross to facilitate the process. See Gillespie, pp. 149 and 164, and James Molony Spaight, *War Rights on Land*, Macmillan, London, 1911, p. 37.

¹⁴ Rosas, pp. 69 and 72–73.

¹⁵ Articles 16, 75 and 80. Notwithstanding these protections, it was reported that during the American Civil War more soldiers died 'due to incarceration than due to acts of no-quarter'; Gillespie, p. 157. For an analysis of the Lieber Code's historical background with regard to the development of the concept of prisoner of war, see, generally, John Fabian Witt, *Lincoln's Code: The Laws of War in American History*, Free Press, New York, 2012.

¹⁶ Y. de Pourtalès and R.-H. Durand, 'Henry Dunant, promoter of the 1874 Brussels Conference: Pioneer of Diplomatic Protection for Prisoners of War', *International Review of the Red Cross*, Vol. 15, No. 167, February 1975, pp. 61–85, at 66–77.

¹⁷ Hague Regulations (1899), Section II. Provisions dealing with prisoners of war can also be found in the Oxford Manual (1880), Articles 21–22 and 61–78.

¹⁸ Rosas, p. 70.

¹⁹ Articles 4, 7 and 20.

²⁰ Article 15.

- 8 The provisions in the Hague Regulations proved not to be precise enough, however, and belligerents instead concluded temporary agreements among themselves to clarify disputed points.²¹ Furthermore, the changing nature of warfare, technological developments, the increased size of armies and the territorial expansion of wars meant that significantly larger numbers of people were being affected. During the First World War, for example, an estimated 7–8 million soldiers and sailors were taken prisoner.²² In 1921, the 10th International Conference of the Red Cross adopted a resolution calling on governments to conclude a diplomatic agreement on the issue as soon as possible and formulated a set of general principles that were to serve as a basis for the proposed new treaty.²³
- 9 The 1929 Geneva Convention on Prisoners of War did not replace the Hague Regulations but supplemented them considerably. Its 80 substantive articles included provisions on the prohibition of reprisals against prisoners of war and collective penalties, the organization of prisoners' labour, the ability of prisoners to elect their representatives, the codification of judicial procedures and punitive measures, and official recognition of the role of the ICRC, both generally and with regard to the organization of a 'Central Agency of information regarding prisoners of war'.²⁴ Forty-seven States were party to that Convention at the outbreak of the Second World War.²⁵
- 10 The negotiations for a new treaty that followed 20 years later were heavily influenced by the experiences of the Second World War. As in the First World War, quarter was regularly denied on a devastating scale.²⁶ Moreover, the Second World War witnessed the use of detention itself as a means to enable the killing of innumerable soldiers and sailors, including by summary execution, extreme acts of violence, ill-treatment, starvation and malnutrition.²⁷ Prisoners were treated differently depending on their nationality and which State they were detained by, and at the end of the war, the repatriation of prisoners was significantly drawn out.²⁸ While the protections conferred by the 1929 Convention had a beneficial impact in several theatres of the Second

²¹ See e.g. Agreement between the British and Ottoman Governments respecting Prisoners of War and Civilians (1917).

²² On issues regarding the treatment of prisoners of war in the First World War, see Gillespie, pp. 166–172.

²³ Bugnion, p. 121, with further information on the preparatory steps that led to the adoption of the 1929 Geneva Convention on Prisoners of War.

²⁴ The agency was named 'Central Prisoners of War Information Agency' in Article 123 of the Third Convention and renamed Central Tracing Agency in 1960; see the commentary on Article 123, para. 4804.

²⁵ In addition, Japan declared that it was ready to apply the Convention during the Second World War 'under conditions of reciprocity and *mutatis mutandis*'; see ICRC, *Report of the International Committee of the Red Cross on its Activities during the Second World War (September 1, 1939–June 30, 1947)*, Volume II: *The Central Agency for Prisoners of War*, ICRC, Geneva, May 1948, p. 229.

²⁶ See e.g. Gillespie, p. 186.

²⁷ See e.g. Rosas, p. 78; Gillespie, pp. 192–200; and Krähenmann, p. 362.

²⁸ For example, it is estimated that there were still 630,000 German prisoners of war in France in 1947; Krähenmann, p. 363.

World War, in others they unfortunately did not, sometimes because they were interpreted as not being applicable.²⁹

- 11 A choice had to be made between developing more detailed rules covering all possible eventualities or formulating general principles sufficiently flexible for their implementation to be adapted to the context. In the end, the Diplomatic Conference, meeting in Geneva in 1949, agreed on a compromise that included detailed provisions, as well as certain general and inviolable principles. It is these principles that today give the Third Convention its specific legal characteristics. They ensure that protection under the Convention is absolute and that the Convention's reach extends beyond the inter-State level to the ultimate beneficiaries, who cannot renounce the rights secured to them.³⁰ While the possibility was left open for special agreements to be concluded along the lines indicated by the model agreements and regulations annexed to the Convention, these agreements cannot lower the level of protection provided by the Convention.
- 12 The Third Convention is more detailed and comprehensive than the 1929 Convention. It clarifies and expands the scope of persons to whom it applies; it provides stricter regulation on the use of prisoner-of-war labour; it articulates clearer rules on keeping prisoners in good health; it elaborates on the guarantees they must be afforded in cases of disciplinary or penal sanctions; and it reinforces the obligation to repatriate prisoners at the end of active hostilities. It further contributes to the system for the suppression of breaches of the Convention, by defining the concept of 'grave breaches' against prisoners of war and creating obligations on States to pass legislation criminalizing such breaches and to search for and to try or extradite those who have committed them. It also provides for a greater role for relief societies and acknowledges the 'special position' of the ICRC in this respect.³¹ Lastly, the Convention provides for the ICRC to visit prisoners of war and forms the basis for its Central Tracing Agency.³²
- 13 To get to these results, several expert conferences were convened in Geneva, where preparatory material gathered by the ICRC and first drafts were centralized and discussed. The most important of these meetings were the Preliminary Conference of National Red Cross Societies in 1946 and the Conference of Government Experts in 1947. The resulting drafts were presented to the 17th International Conference of the Red Cross in Stockholm in 1948, where further amendments were adopted.

²⁹ For example, a narrow interpretation of the definition of prisoner of war was used to deny prisoner-of-war status to soldiers of several countries who surrendered following the capitulation of their State.

³⁰ See common Article 7 (Article 8 in the Fourth Convention). See also Abi-Saab, pp. 267–268.

³¹ Article 125(3).

³² See Articles 126 and 123, respectively.

- 14 The Stockholm drafts served as the basis for negotiation at the Diplomatic Conference convened by the Swiss Federal Council as the depositary of the 1929 Conventions, which met in Geneva from 21 April to 12 August 1949. Fifty-nine States were officially represented by delegations with full powers to discuss the texts; four States sent observers. The Conference immediately set up four main committees, which sat simultaneously and considered, respectively: (1) the revision of the First Geneva Convention and the drafting of the Second Geneva Convention, which adapts the First Convention to sea warfare; (2) the revision of the Geneva Convention on Prisoners of War; (3) the drafting of a completely new convention which for the first time addressed the protection of civilians; and (4) the provisions common to all four Conventions.
- 15 Besides numerous working groups,³³ a Coordination Committee and a Drafting Committee, which edited the text for uniformity and consistency, were formed towards the end of the Conference.
- 16 The discussions and results obtained in these different committees and working groups are reflected in the present commentaries on the individual articles, usually in the historical background sections, and thus need not be summarized here. Nevertheless, it merits mentioning that the records of the Diplomatic Conference, which are published,³⁴ as well as the reports from individual participants, testify to the delegates' unstinting work for almost four months. They reflect a remarkable humanitarian spirit and a willingness to cooperate that, despite divergent opinions, prevailed throughout the Diplomatic Conference.
- 17 Since 1949, there have been a number of international armed conflicts in which sometimes large numbers of combatants were taken captive and benefited from the protections of the Third Convention.³⁵ While overall the number of prisoners captured in international armed conflicts since the Second World War has declined, the practice of taking prisoners has continued. The Third Convention provides a practical and realistic framework addressing the needs of prisoners of war while in enemy hands, regardless of their number. This framework was supplemented in 1977 by Additional Protocol I.³⁶
- 18 Furthermore, the Third Convention, like the other three Conventions, replicated Article 3 governing non-international armed conflict. The protections afforded by Article 3 remain essential, especially as most armed conflicts today are of a non-international character. Common Article 3 is supplemented by

³³ While the draft French text referred to 'groupes de travail', the English version used the term 'Working Parties'.

³⁴ See *Final Record of the Diplomatic Conference of Geneva of 1949*, four volumes, Vol. I, Vol. II-A, Vol. II-B, Vol. III, Federal Political Department, Bern, 1950, <http://library.icrc.org/library/search/notice?noticeNr=2253>.

³⁵ For a non-exhaustive list of examples, see fn. 102.

³⁶ See, in particular, Articles 43–47.

Additional Protocol II of 1977, as well as by customary international humanitarian law applicable in non-international armed conflicts.

3. *Transversal issues in the Third Convention*

a. Humane treatment, respect for persons and their honour

- 19 The basic principle underlying all four Conventions is respect for the life and dignity of the individual, even – or especially – in situations of armed conflict. Those who suffer during armed conflict must be aided, protected and cared for. They must in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, wealth or any other similar criteria.
- 20 The internment of prisoners of war is a preventive, not punitive measure.³⁷ It prevents captured soldiers from returning to the battlefield and allows the Detaining Power to benefit from their labour under certain conditions during internment. Curtailing the movements of a prisoner of war is not intended as a punishment. For a combatant, the mere participation in hostilities is not subject to judicial prosecution; only those serious violations of humanitarian law known as war crimes are. This is reflected in the concept of ‘combatant immunity’.³⁸
- 21 The Third Convention requires that prisoners of war be treated humanely, including with respect for their persons and their honour, and protected against acts of violence, intimidation, insults, public curiosity and physical or mental torture.³⁹ These requirements underpin the entire protective framework of the Convention. The Detaining Power must respect the inherent human dignity of prisoners of war and their inviolable quality as human beings. This includes respect for their military honour: for example, prisoners of war must be permitted to wear badges of rank and nationality, as well as military decorations, and officers may not be compelled to work.⁴⁰

b. Protections for categories of prisoners with distinct needs

- 22 Humanitarian law seeks to protect persons affected by armed conflict and, in doing so, recognizes that different categories of persons have specific needs, capacities and perspectives and face distinct risks, which must be taken into account in ensuring that they are adequately protected. Indeed, the four Geneva Conventions can be said to reflect general categories of persons

³⁷ On the concept of internment, see the commentary on Article 21, section C.

³⁸ On the concept of combatant immunity, see the commentaries on Article 5, para. 1114, and on Article 85, para. 3634.

³⁹ See Articles 13, 14 and 17(4).

⁴⁰ Articles 40 and 49. See also Articles 44 and 45, which require the Detaining Power to treat all prisoners of war with due regard to their rank.

affected by armed conflicts: The First Convention covers wounded and sick combatants on land; the Second Convention covers wounded, sick and shipwrecked members of the armed forces at sea; the Third Convention covers (military) personnel who have fallen into the power of the enemy; and the Fourth Convention covers civilians. Each Convention aims to provide protection that is specific to the category of persons it deals with.

- 23 The drafters of the four Conventions understood that beyond these general categories, there were certain subcategories of persons with distinct needs and facing particular risks who would require special protection. Accordingly, the Conventions contain rules covering, for example, women, children, older persons and persons with disabilities.
- 24 In the Third Convention, the rules relating to women seek to acknowledge the specific needs and address the particular risks they may face during armed conflict.⁴¹ These risks may be physical or physiological, and may also stem from social, economic, cultural and political structures in a society. They include, but are not limited to, sexual violence, risks to their physical health when pregnant or breastfeeding, and differences in safe access to care. As a product of their time, some of the rules of the Conventions are articulated in terms that do not meet today's standards. For example, the prohibition of sexual violence is construed as an attack on a woman's honour and as a violation of family rights, instead of as violence to women's physical and psychological integrity.⁴² The present Commentary thus analyses the specific needs of women interned as prisoners of war from the perspective of contemporary practice and legal requirements.
- 25 At first sight, specific rules on the protection of children may seem to be more a matter for the Fourth than for the Third Convention.⁴³ However, at the time the Conventions were drafted, some States still fielded considerable numbers of children in their armed forces and the rules of the Convention were intended to apply to them. Today, the issue of recruitment and use of children

⁴¹ For a further discussion of women and armed conflict, see e.g. Charlotte Lindsey, *Women facing war: ICRC study on the impact of armed conflict on women*, ICRC, Geneva, 2001; Charlotte Lindsey-Curtet, Florence Tercier Holst-Roness and Letitia Anderson, *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document*, ICRC, Geneva, 2004; Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War*, Martinus Nijhoff Publishers, Leiden, 2005; Dubravka Žarkov, 'From Women and War to Gender and Conflict?: Feminist Trajectories', in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes and Nahla Valji (eds), *Oxford Handbook of Gender and Conflict*, Oxford University Press, 2018, pp. 17–34; and Judith Gardam, 'The Silences in the Rules That Regulate Women During Times of Armed Conflict', in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes and Nahla Valji (eds), *Oxford Handbook of Gender and Conflict*, Oxford University Press, 2018, pp. 35–47.

⁴² Fourth Convention, Article 27(2).

⁴³ A child refers to any person below 18 years of age, in accordance with Article 1 of the 1989 Convention on the Rights of the Child.

in armed forces is regulated in other treaties.⁴⁴ Although most States now employ fewer persons under the age of 18 in active military service, a Detaining Power may still find itself responsible for children in prisoner-of-war camps, either because a State still has children serving in its armed forces (and such a child who has fallen into the power of the enemy may be detained as a prisoner of war) or because they were born in the camp or are in some way affiliated with or related to other captured persons. Children in the hands of a Detaining Power are owed special protection because they are particularly vulnerable and have a distinct set of developmental and health needs.⁴⁵ The need for special protection is especially urgent in the case of minors who are prosecuted and tried by a Detaining Power in the absence of a meaningful child justice system.⁴⁶

- 26 Disability and age must also be taken into account. This means that medical and other support services must be available to all prisoners of war, including those with disabilities. In addition, prisoners of war with disabilities must have access to specialized and targeted health and rehabilitation services and support suited to their specific capacities and needs.⁴⁷ Only persons who are physically fit may be required to work.⁴⁸ Older prisoners of war must be treated with due regard to their age and state of physical health.⁴⁹
- 27 Beyond these explicit rules, Article 16 of the Third Convention also prohibits 'adverse distinction based on race, nationality, religious belief, political opinion or any other distinction founded on similar criteria'. The reference to 'similar criteria' confirms that this list is non-exhaustive. Thus, adverse distinction based on other grounds, such as a prisoner of war's ethnicity, disability, level of education, family connections, age or state of health would equally be prohibited.
- 28 Furthermore, Article 16 requires that all prisoners of war be treated equally. To ensure that all prisoners of war benefit from the guarantee of equal treatment, their specific needs and the particular risks they face must be identified, assessed and provided for. This means, effectively, that differentiated treatment is sometimes warranted or required by the Convention. This understanding is reflected, for example, in Article 25 (quarters) and Article 26 (food), which

⁴⁴ Additional Protocol I, Article 77(2); Additional Protocol II, Article 4(3)(c); Convention on the Rights of the Child (1989), Article 38(2) and (3); Optional Protocol on the Involvement of Children in Armed Conflict (2000), Articles 1, 2 and 3; and African Charter on the Rights and Welfare of the Child (1990), Article 22(2). See also Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007).

⁴⁵ See the commentary on Article 16, para. 1755.

⁴⁶ See the commentaries on Article 84, para. 3609, on Article 102, section D, and on Article 108, para. 4200. See also Article 77(5) of Additional Protocol I, which provides that prisoners of war below the age of 18 may not be executed for offences related to an armed conflict.

⁴⁷ See the commentary on Article 30, section C.2.

⁴⁸ Article 49(1).

⁴⁹ See the commentary on Article 16, para. 1754.

refer, respectively, to the 'habits and customs' and 'habitual diet' of prisoners of war.

- 29 To comply with the requirement of equal treatment, the Detaining Power must put in place appropriate planning and preparation measures, with the help of relevant professionals, such as gender specialists or cultural advisers.

c. The principle of assimilation

- 30 The standards for the treatment of prisoners of war while in captivity are often determined in the Third Convention by reference to those in force for members of the armed forces of the Detaining Power. In other words, over the course of modern history, prisoners of war have thus been for the most part 'assimilated' into the armed forces of the Detaining Power. Such assimilation, however, no longer extends to 'impressment' or 'pressing', a practice by which captured enemy soldiers were forced into serving in the armed forces of the Detaining Power.⁵⁰ Instead, the term 'assimilation' reflects an understanding that prisoners of war will be treated on the same terms as members of the armed forces of the Detaining Power.⁵¹
- 31 The term 'principle of equivalency' has been used to convey the same concept.⁵² However, it was decided to stick to 'principle of assimilation' throughout this Commentary, as it was the term used during the preparatory work for the Convention.⁵³
- 32 The principle of assimilation is the foundation on which a number of rules in the Third Convention rest. It occupies a particularly significant place in Section VI, Chapter III (penal and disciplinary sanctions), where it occurs in the opening provision, Article 82 (applicable legislation).⁵⁴ It also features in Article 20 (conditions of evacuation), Article 25 (quarters), Article 46 (conditions for transfer), Article 84 (courts), Article 87 (penalties), Article 88 (execution of penalties), Article 95 (confinement awaiting hearing), Article 102 (conditions for validity of sentence), Article 103 (confinement awaiting proceedings), Article 106 (the right to appeal) and Article 108 (the establishments and conditions for serving a sentence). The principle is also implicit in

⁵⁰ On impressment, see Peter H. Wilson, 'Prisoners in Early Modern European Warfare', in Scheipers, pp. 39–56, at 50–53. Pursuant to Article 23(h) of the 1907 Hague Regulations, it is forbidden to compel enemy nationals 'to take part in the operations of war directed against their own country'. Compelling a prisoner of war to serve in the armed forces of the hostile Power is listed in Article 130 as a grave breach of the Third Convention.

⁵¹ In addition, Articles 51 and 53 of the Third Convention require that the Detaining Power ensure that the working conditions of prisoners of war are not inferior to those enjoyed by its own nationals more broadly. Strictly speaking, these two articles do not reflect the principle of assimilation as used in general in the Third Convention.

⁵² See e.g. United States, District Court for the Southern District of Florida, *Noriega case*, Judgment, 1990, p. 1526.

⁵³ See e.g. *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 518.

⁵⁴ See the commentary on Article 82.

Article 33 (rights and privileges of retained personnel), Article 52 (dangerous or humiliating labour) and Article 60 (advances of pay).

- 33 Throughout the Convention, the principle of assimilation requires that prisoners of war be treated in the same way as members of the Detaining Power's own forces in relation to a given issue. Requiring identical treatment may be unrealistic in certain circumstances. Some of the articles in which the principle of assimilation features therefore require 'similar' instead of the same treatment. For example, Article 20 requires that the conditions of evacuation of prisoners of war from the combat zone be *similar* to the conditions in which movements of the Detaining Power's own forces take place. The principle of assimilation also ensures that all prisoners of war interned by a Detaining Power are subject to the same or similar conditions and standards, irrespective of their country of origin. This would not necessarily be the case if prisoners of war were treated according to the standards and conditions prevailing in their own armed forces.
- 34 Where the Convention applies the principle of assimilation in a specific context, the result is that prisoners of war benefit indirectly from the relevant domestic legal framework, as informed by applicable international law, to the same extent as members of the Detaining Power's armed forces. It is beyond the scope of this Commentary to determine exactly what that means in every case.
- 35 The principle of assimilation also has practical value. It facilitates the task of administering the internment of prisoners of war, since the Detaining Power applies to them some of the rules and standards that are already in force for its own troops. The Detaining Power is necessarily familiar with and has pre-existing experience of implementing those rules and standards and thus can readily apply them to prisoners of war as well.
- 36 The principle does not operate in a vacuum but in conjunction with the minimum standards and safeguards spelled out in the rest of the Convention, in particular those concerning the humane treatment of prisoners of war.⁵⁵ This is made explicit in several rules, including Article 82.⁵⁶ The approach to protecting prisoners of war by reference to the rules of both national and international law is also reflected in the provisions on penal and disciplinary sanctions (Section VI, Chapter III). Several of these provisions expressly make the principle of assimilation subject to compliance with minimum standards that must be applied to all prisoners of war, irrespective of the standards or

⁵⁵ See Article 13 and the provisions that give expression to the requirement of humane treatment in specific areas, such as quarters (Article 25), food (Article 26), clothing (Article 27) and hygiene (Article 29).

⁵⁶ 'However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.' For further examples, see Article 25 (quarters), Article 46 (conditions of transfer), Article 50 (authorized work), Article 84 (courts), Article 87 (penalties), Article 95 (confinement awaiting hearing), Article 102 (conditions for validity of sentence), Article 103 (confinement awaiting trial) and Article 108 (execution of penalties).

conditions applicable to members of the armed forces of the Detaining Power. Accordingly, when the treatment afforded by a Detaining Power to its own armed forces falls short of the minimum standards set out in the Convention, the latter standards apply with respect to prisoners of war.

- 37 The application of the principle of assimilation to the two categories of 'civilian prisoners of war' recognized by Article 4A(4)–(5) of the Convention raises particular challenges.⁵⁷
- 38 In the course of multinational/combined operations, it may not always be apparent which State is the Detaining Power and thus responsible for the treatment of prisoners.⁵⁸ Clarity on the identity of the Detaining Power is required for the principle of assimilation to operate effectively.

d. Developments in science and technology since the adoption of the Convention

- 39 The drafters of the Third Convention could not have foreseen all the scientific and technological advances that would follow its adoption. This Commentary attempts to provide an analysis that reflects the practice that has developed in applying and interpreting the Convention in the decades since its adoption, while preserving those elements of the original Commentary that are still relevant. This requires, for instance, acknowledging where references to science or technology within the Conventions or the original Commentary are outdated. It also requires identifying instances where developments in science and technology inform the current interpretation of the Convention.
- 40 An example of a reference to outdated technology can be found in the provisions relating to the sending and receiving of letters and cards. Article 71 provides that in particular instances where sending or receiving messages is proving difficult, prisoners must be allowed to send a telegram. However, this technology has been overtaken by more modern means of communication, such as email, telephone or video calls, and practice supports their use in those instances. Today's technologies are likely to evolve further, and the Convention should therefore not be frozen in time, but its reading must allow for future developments to be taken into account.
- 41 Similarly, the Conventions reflected an advanced understanding of medical science for their time and, in particular, with respect to the possible medical concerns of prisoners of war, were supported by lessons learned from the Second World War. In particular, the Third Convention recognizes the importance of

⁵⁷ The category of persons entitled to prisoner-of-war status is broader than just 'military personnel' inasmuch as certain categories of civilians are assimilated thereto. However, the rules for the treatment of all prisoners of war are determined by reference to those in force for military personnel. For a discussion of how the principle of assimilation applies to civilian persons with prisoner-of-war status, see the commentary on Article 4, para. 1046.

⁵⁸ See the commentaries on Article 12, section C.2.b, and on Article 82, para. 3569.

mental health by expressly forbidding acts of torture designed to inflict mental harm and by providing that severe mental health problems constitute a ground for repatriation during hostilities in the same way as 'physical' illnesses.⁵⁹

- 42 Nevertheless, recent decades have seen considerable progress in the medical sciences, and some references to medical concepts in the Convention are outdated. For example, the Model Agreement in Annex 1 lists the circumstances in which a direct repatriation is required. Certain trauma listed, which would have been considered chronic at the time, would no longer be classified as such now. However, this, too, is subject to potential differences in the capacities and equipment of Detaining Powers. This Commentary thus encourages Detaining Powers to interpret the listed conditions in light of current progress in medical science and changes in the conditions of warfare.⁶⁰
- 43 Some provisions, on the other hand, were drafted in a way that explicitly foresees developments in science and technology. Thus, Article 31 on medical inspections, which provides for the obligation to check for contagious diseases, requires that 'the most efficient methods available' for this purpose be employed.⁶¹ Similarly, Article 141 requires the depositary to communicate 'by the quickest method' any ratifications of or accessions to the Convention received from Parties to the conflict.⁶²
- 44 Technological developments also need to be considered in the application of general provisions of the Convention. For example, some new technologies, such as in the areas of identification and surveillance, have the potential to affect respect for persons and their honour. Even though these technologies did not exist at the time the Convention was drafted, any such methods must be employed in a way that is consistent with the requirement of humane treatment.⁶³

e. The role of Protecting Powers

- 45 The institution of Protecting Powers, in which a State mandates another to safeguard its interests and those of its nationals vis-à-vis a third State, is well established in international diplomatic practice. In the aftermath of the First World War, this diplomatic institution was imported into humanitarian treaty law, creating a specific, wartime role for Protecting Powers within the Geneva Conventions. The first codification of the role of Protecting Powers in humanitarian law was in the 1929 Geneva Convention on Prisoners of War.⁶⁴

⁵⁹ See Articles 17(4) and 109(1), read together with Annex I, para. I.A.3(g), respectively.

⁶⁰ See the commentary on Article 110, paras 4324–4325. See also the commentary on Article 117, para. 4424, which describes the impact of modern warfare on ease of re-employment, and accordingly the reinforced relevance of Article 117.

⁶¹ For more details, see the commentary on Article 31, para. 2299.

⁶² For more details, see the commentary on Article 141, section C.3.

⁶³ For more details, see e.g. the commentary on Article 14, paras 1676–1677.

⁶⁴ Article 86. For further details, see the commentary on Article 8, section B.

- 46 Under the 1929 Convention, the appointment of Protecting Powers was not obligatory and ‘nearly 70 percent of the prisoners in the Second World War were deprived of the help of a Protecting Power for all or part of their captivity’.⁶⁵ The experience of the Second World War demonstrated both the improvements that the appointment of Protecting Powers could secure to persons affected by armed conflicts – particularly in the realm of judicial guarantees and legal assistance for persons facing trial by the enemy – and the abuses that frequently occurred in cases where Protecting Powers were absent.
- 47 In the light of this experience, the 1949 Conventions made it compulsory for Parties to international armed conflicts to appoint Protecting Powers.⁶⁶ Thus, the Conventions made the Protecting Powers system ‘the lynchpin of the system for monitoring compliance with the Geneva Conventions in international armed conflict’.⁶⁷ The Conventions, in particular the Third and Fourth Conventions, include numerous provisions that assign specific and important roles and duties to Protecting Powers,⁶⁸ failing which it would be difficult to fulfil specific treaty obligations.⁶⁹ For the purposes of the Third Convention, supervision by Protecting Powers is particularly central to ensuring respect for the judicial guarantees of prisoners of war facing trial.⁷⁰
- 48 The presence of Protecting Powers is of such significance to the operation of the Conventions that the drafters went so far as to put in place a system to appoint a substitute in case High Contracting Parties encounter obstacles in fulfilling their obligation to appoint a Protecting Power.⁷¹
- 49 However, since 1949 Protecting Powers have only been appointed in five international armed conflicts, the last instance being in 1982.⁷² There has been no protest at the failure of States to fulfil this obligation in subsequent conflicts. The same is true for Article 10 with regard to the appointment of

⁶⁵ Bugnion, p. 872.

⁶⁶ See the commentary on Article 8, para. 1225. Article 5 of Additional Protocol I also makes the appointment of Protecting Powers compulsory.

⁶⁷ See the commentary on Article 8, para. 1186.

⁶⁸ See the commentary on Article 8, sections E.4 and E.5. See also Bugnion, pp. 853–854 and 878–883, and Kolb, pp. 553–556.

⁶⁹ Examples of provisions in the Third Convention that contain an obligation related to the presence of a Protecting Power, and where failure to comply with the provision could seriously endanger the rights of protected persons, include: Article 78 (complaints and requests); Article 79 (election); Article 81 (prerogatives); Article 100 (death penalty); Article 101 (delay in the execution of the death penalty); Article 104 (notification of proceedings); Article 105 (rights and means of defence); Article 107 (notification of findings and sentence); Article 121 (prisoners killed or injured in special circumstances); and Article 126 (supervision).

⁷⁰ This can be demonstrated, for instance, by the fact that discussions on what became Article 104 (notification of proceedings) referred to the provision that was to become Article 126 (supervision). The ICRC noted that, although the problem of the absence of a Protecting Power was general, such absence ‘may lead to particularly serious consequences where judicial assistance is concerned’; see *Preliminary Documents submitted by the ICRC to the Conference of Government Experts of 1947*, Vol. II, p. 162. See also Bugnion, p. 870.

⁷¹ Common Article 10 (Article 11 of the Fourth Convention).

⁷² See the commentary on Article 8, para. 1297.

substitutes; indeed, none have formally been appointed since 1949.⁷³ Based on this subsequent practice, appointing a Protecting Power or a substitute no longer seems to be considered an obligation on Parties to a conflict.⁷⁴ At the same time, there is no indication that the High Contracting Parties consider that Article 8 has fallen into desuetude.⁷⁵

- 50 The fact that, by their subsequent practice, States have interpreted the obligations in Articles 8 and 10 as optional does not diminish their obligations to permit effective supervision of the rules of the Conventions that require the involvement of a Protecting Power. To comply with those rules that require supervision by a Protecting Power or a substitute, States should endeavour to appoint either a Protecting Power or a substitute. Failing this, they should ensure that the objective of involving a Protecting Power can still be achieved. To do so, they may invite an impartial humanitarian organization, such as the ICRC, to fulfil the same functions. In practice, both prior to and since 1949, the ICRC, acting on its right of humanitarian initiative as enshrined in Article 9, has assisted States in this respect.⁷⁶
- 51 The Conventions also contain provisions which call on Protecting Powers to transmit information between the Parties to the conflict.⁷⁷ These provisions were based on the traditional assumption that warring Parties would not maintain diplomatic relations. However, that assumption is not always valid.⁷⁸ If the Parties to a conflict continue to maintain direct relations, there may be no need to involve the Protecting Power as far as such activities are concerned. However, if one is appointed, then the information referred to in the relevant provisions must be transmitted to it. While many of these provisions do not explicitly mention the ICRC as an alternative to the Protecting Power, a Detaining Power may invite the ICRC to act as a neutral intermediary to transmit the relevant information. In practice, as mentioned above, the ICRC has, both prior to and since 1949, assisted States in this respect as well. However, in line with its humanitarian activities in general and as a matter of international law, the ICRC is not obliged *de facto* to accept an invitation to perform these functions.⁷⁹

f. The missing

- 52 The Third Convention contains several provisions designed to avoid persons going missing. These provisions aim to ensure respect both for the person and

⁷³ See the commentary on Article 10, paras 1433–1434.

⁷⁴ See the commentary on Article 8, paras 1196 and 1226–1227. See also Kolb, p. 559.

⁷⁵ See Kolb, p. 559.

⁷⁶ See the commentary on Article 9, section C.1; Kolb, p. 557; and Bugnion, pp. 870–872 and 901.

⁷⁷ See e.g. Articles 66 and 68.

⁷⁸ On the implication of the outbreak of an international armed conflict on diplomatic relations, see, further, the commentary on Article 8, para. 1220.

⁷⁹ See the commentary on Article 9, section C.1.

dignity of each prisoner and for their next of kin by providing them with information on the fate and whereabouts of their relative. Key obligations in this respect concern the gathering of personal information,⁸⁰ relations with the prisoner's family⁸¹ and identification of the dead.⁸²

- 53 Furthermore, the Convention establishes an institutional framework for avoiding persons going missing and for searching for those who do. In particular, the Convention requires that a national information bureau be set up, which along with the Central Tracing Agency would be tasked with receiving, collecting and forwarding information regarding prisoners of war.⁸³ The role of the Central Tracing Agency is explicitly provided for in relation to the prevention of prisoners going missing,⁸⁴ as well as in relation to the transmission of medical certificates, certificates for accidents at work, statements on the non-return of personal effects, monies or valuables and instruments, papers or documents, such as powers of attorney and wills.⁸⁵ Furthermore, the Convention requires the establishment of commissions to search for dispersed prisoners of war with a view to their repatriation at the end of active hostilities.⁸⁶
- 54 Lastly, the Convention also provides the legal basis for ICRC visits to prisoners of war,⁸⁷ a function that the organization has carried out in numerous international armed conflicts since 1949. During these visits (which are usually repeated), the ICRC performs a range of functions, including conducting private interviews with prisoners and facilitating the exchange of family messages. These activities also help prevent prisoners from going missing.

g. Planning and preparation

- 55 As can be seen from the above overview of the range of issues dealt with in the Third Convention, proper planning and preparation, including making sure the domestic legal framework is up to date, are indispensable to its implementation. This is the case in general for all the Conventions and is recognized in common Article 2(1), which refers to provisions to be implemented in peacetime. Furthermore, compliance with some obligations in the Conventions may best be achieved during an armed conflict if preparatory steps have been taken in advance.

⁸⁰ See Article 17(1). See, in this regard, also Article 16 of the First Convention and Article 19 of the Second Convention.

⁸¹ See, in particular, Article 70 (capture cards).

⁸² Article 120.

⁸³ Articles 122–123.

⁸⁴ See, in particular, Article 70 (capture cards) and Article 122(3) (forwarding of information by the national information bureau).

⁸⁵ See Articles 30(4), 54(2), 68(2), 77(1) and 120(1), respectively.

⁸⁶ Article 119(7).

⁸⁷ Article 126.

- 56 Because the Third Convention sets out a detailed regime governing the treatment of combatants from the moment of their capture to their final release and repatriation, as dealt with in Articles 6–121, planning and preparation are particularly important in the context of this Convention. For example, a national information bureau must already be set up and functioning at the beginning of an armed conflict.⁸⁸ The commentaries on specific provisions further highlight where planning and preparation are relevant.⁸⁹
- 57 In addition, as a preparatory measure, the Convention requires that any military or other authority which in time of war is responsible for prisoners of war be ‘specially instructed’ in the Convention.⁹⁰
- 58 Lastly, the Convention requires that a number of steps be taken as soon as an international armed conflict breaks out, including notifying the adversary of its laws and regulations on a range of issues.⁹¹

4. Structure of the Convention

- 59 The Convention contains six parts. Some parts are subdivided into sections and some sections are further subdivided into chapters. The structure is part of the context for the interpretation of the Convention. In the present Commentary, each part and each section begin with an overview situating it within the Convention. Further references to where an article is situated in the structure of the Convention are provided in the commentaries on individual articles.⁹²
- 60 **Part I** contains general provisions and the so-called ‘common articles’. The Third Convention starts with a series of articles that are expressed in the same, or very similar, terms as their counterparts in the other three Conventions. In the present Commentary, the texts on the common articles in the 2016 and 2017 Commentaries on the First and Second Conventions, respectively, have been adapted, where necessary, to suit the context of the Third Convention; they have not been substantially updated.⁹³ Articles 4–5 of the Third Convention, however, set out the personal and temporal scope of application specific to the subject matter of the Convention, and the commentaries on these articles are therefore substantively different from those in the other Conventions.

⁸⁸ See the commentary on Article 122, para. 4702.

⁸⁹ See e.g. the commentaries on Article 5, para. 1126, on Article 22, para. 1983, on Article 69, para. 3114, on Article 70, para. 3133, and on Article 74, para. 3302.

⁹⁰ For details, see the commentary on Article 127(2).

⁹¹ See Article 21(2) (rules on release on parole), Article 43 (titles and ranks), Article 69 (arrangements made to enable prisoners of war to exercise their right of correspondence and to receive relief supplies) and Article 120(1) (requirements for the validity of wills). See also Article 100(1) on information to be provided to the Protecting Power.

⁹² See e.g. the commentaries on Article 69, para. 3104, and on Article 92, para. 3810.

⁹³ See also para. 69 of this Introduction.

- 61 **Part II** of the Convention lays down the ‘general protection of prisoners of war’, which applies at all times, from the moment of capture until final release and repatriation. These provisions are ‘general’ in the sense that they are further specified and fleshed out in the subsequent provisions of the Convention and therefore inform their interpretation.
- 62 **Part III** on captivity is the longest of the Convention. It is divided into six sections dealing, respectively, with the beginning of captivity, internment, labour, financial resources, relations with the exterior and relations with the authorities. The section on internment contains detailed regulations on issues such as quarters, food and clothing; hygiene and medical attention; religious, intellectual and physical activities; and transfer of prisoners. The section on relations with the authorities contains a long chapter on penal and disciplinary sanctions against prisoners of war. Details on the contents of each section can be found in the respective introductions.
- 63 **Part IV** on termination of captivity contains a section on direct repatriation and accommodation in neutral countries during a conflict, as well as a section on final release and repatriation at the end of active hostilities. It also includes a section on death of prisoners of war while in captivity. Further details on each section can be found in the respective introductions.
- 64 **Part V** on information bureaux and relief societies deals with important ‘institutional’ aspects of the Convention. It mandates the creation of national information bureaux and provides the legal basis for the activities of the ICRC’s Central Tracing Agency for the benefit of prisoners of war. Both the bureaux and the Agency play a fundamental role in achieving one of the key objectives of the Convention, namely to avoid prisoners of war going missing.
- 65 **Part VI** on the execution of the Convention contains a section on ‘general provisions’, which prescribe a range of measures aimed at ensuring respect for the Convention, including ICRC visits, dissemination, penal sanctions and enquiry. As with Part I, most of these provisions are common to the four Conventions. It also includes a section containing the ‘final provisions’ that are largely common to the four Conventions.

B. The ICRC project to update the Commentaries

1. Background and scope of the project

- 66 The present volume is the third instalment in a series of six updated Commentaries.
- 67 Upon the adoption of the 1949 Geneva Conventions, a group of ICRC lawyers who had been involved in the drafting and negotiation of the Conventions set out to write a detailed commentary on each of their provisions. This led to the publication between 1952 and 1960 of a Commentary on

each of the four Conventions, under the general editorship of Jean Pictet.⁹⁴ Similarly, when the Additional Protocols were adopted in 1977, ICRC lawyers involved in their negotiation set out to write a commentary on both Protocols. These were published in 1986–1987.⁹⁵

- 68 However, with the passage of time and the development of practice, a genuine need was felt to update the Commentaries. The ICRC therefore decided to embark upon a project to achieve that purpose. This update seeks to reflect the practice that has developed in applying and interpreting the Conventions and Protocols during the decades since their adoption, while preserving those elements of the original Commentaries that are still relevant. The objective is to ensure that the new editions reflect contemporary practice and legal interpretations. Therefore, the new editions are more detailed as they have the benefit of more than 60 years of application of the Conventions – 40 years in the case of the 1977 Additional Protocols – and their interpretation by States, courts and scholars. The new Commentaries reflect the ICRC's current interpretations of the law, where they exist. They also indicate the main diverging views where these have been identified.
- 69 The update preserves the format of the original Commentaries, namely an article-by-article analysis of each of the provisions of the Conventions and Protocols. The commentaries on the common articles, including those at the end of the Convention,⁹⁶ have been drafted to cover the four Conventions. They are adapted to the specific context of a Convention where this is particularly relevant or based on the text of the provision. This is the case, for example, with respect to two specific grave breaches in the Third Convention, namely compelling a prisoner of war to serve in the forces of the hostile Power and wilfully depriving a prisoner of war of the rights of fair and regular trial.⁹⁷

⁹⁴ Geneva Convention I: commentary by Jean S. Pictet, with contributions by Frédéric Siordet, Claude Pilloud, Jean-Pierre Schoenholzer, René-Jean Wilhelm and Oscar M. Uhler, published in 1952 (French original and English). Geneva Convention II: commentary by Jean S. Pictet, with the co-operation of Rear-Admiral M.W. Mouton (Netherlands), with contributions by Frédéric Siordet, Claude Pilloud, Jean-Pierre Schoenholzer, René-Jean Wilhelm and Oscar M. Uhler, published in 1959 in French and in 1960 in English. Geneva Convention III: commentary by Jean de Preux, with contributions by Frédéric Siordet, Claude Pilloud, Henri Coursier, René-Jean Wilhelm, Oscar M. Uhler and Jean-Pierre Schoenholzer, published in 1958 in French and in 1960 in English. Geneva Convention IV: commentary by Oscar M. Uhler and Henri Coursier, with Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, published in 1956 in French and in 1958 in English.

⁹⁵ Additional Protocol I (and Annex I): commentary by Claude Pilloud, Jean de Preux, Yves Sandoz, Bruno Zimmermann, Philippe Eberlin, Hans-Peter Gasser and Claude F. Wenger. Additional Protocol II: commentary by Sylvie-Stoyanka Junod. Both commentaries were prepared under the editorship of Yves Sandoz, Christophe Swinarski and Bruno Zimmermann and published in French in 1986 and in English in 1987.

⁹⁶ The general provisions, Articles 127–132, and the final provisions, Articles 133–143, are also found in the same or similar form in the other three Conventions.

⁹⁷ See the commentary on Article 130, sections D.6 and D.7.

- 70 For further details on the background to the project, see the introduction to the First Convention.⁹⁸

2. The ICRC's role in the interpretation of the Conventions and Protocols

- 71 The ICRC mandated the writing of the original Commentaries pursuant to its role as guardian and promoter of humanitarian law. The same is true for the current updated edition. This role is recognized in the Statutes of the International Red Cross and Red Crescent Movement, in particular the ICRC's role 'to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof'.⁹⁹ It also follows from its role 'to undertake the tasks incumbent upon it under the Geneva Conventions' and 'to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law'.¹⁰⁰ In many cases, these tasks require the ICRC to interpret the humanitarian law treaties underlying this mandate. Hence, the interpretation of humanitarian law is at the heart of the organization's daily work across its operations.
- 72 A wide variety of other entities also interpret the Conventions and Protocols, in particular States (through government lawyers in ministries, military commanders, staff officers and lawyers, and advocates before courts), national and international courts and tribunals, arbitral tribunals, international organizations, components of the Red Cross and Red Crescent Movement, non-governmental organizations and academics. Their interpretations have been taken into account in this Commentary, in particular interpretations by States and decisions of courts and tribunals, which are among the most important sources of interpretative guidance.
- 73 In addition, what sets the updated Commentaries mandated by the ICRC apart from academic commentaries is that the contributors were able to draw on research in the ICRC archives, while respecting their confidential nature, to assess the application and interpretation of the Conventions and Protocols since their adoption. The ICRC has kept archives since it was founded in 1863. In the interest of transparency, in 1996 the ICRC decided to open parts of its archives to the public. At the time of writing, the public can request access to most of the documents from the general archives dated 1975 and older. Given the confidential nature of its work, however, starting from

⁹⁸ Commentary on the First Convention, Introduction, paras 1–15.

⁹⁹ Statutes of the International Red Cross and Red Crescent Movement (1986), Article 5(2)(g). On the ICRC's role in the interpretation of international humanitarian law, see also Bugnion, pp. 914–922.

¹⁰⁰ Statutes of the International Red Cross and Red Crescent Movement (1986), Article 5(2)(c).

2017 the ICRC decided to extend the closure period for its general archives from 40 to 50 years.¹⁰¹

- 74 Within the ICRC's archives, there is a wealth of information relating to prisoners of war. This information is based to a large extent on reports from visits to prisoners of war carried out by ICRC delegates pursuant to Article 126 of the Convention. Over the last 70 years, ICRC delegates have witnessed many examples of compliance with the Third Convention, as well as practical challenges and difficulties States have faced in implementing it. For this Commentary on the Third Convention, reports from ICRC visits relating to a number of international armed conflicts have been analysed.¹⁰² On specific issues, the authors have carried out further archival research beyond these conflicts. If the documents are from the ICRC archives that are open to the public, or from other public sources, references are included in the footnotes. Because documents from the closed archives cannot be directly referenced, footnotes are not included each time the authors relied on information from the closed archives. For reasons of confidentiality, the Commentary also does not specify the conflict(s) involved.

C. Methodology

1. Introduction

- 75 The updated Commentary applies the methodology for treaty interpretation as set out in the 1969 Vienna Convention on the Law of Treaties, in particular Articles 31–33.¹⁰³ Even though that Convention was adopted 20 years after the Geneva Conventions, these rules are generally considered to reflect customary international law.¹⁰⁴

¹⁰¹ See Rules governing Access to the Archives of the International Committee of the Red Cross, adopted by the Assembly of the International Committee of the Red Cross, 2 March 2017. These rules took effect on 1 April 2017 and are not retroactive. With the adoption of this document, the closure period of the general archives was extended from 40 to 50 years; see Article 5(2). Archives previously opened to the public remain so. For an analysis, see Valérie McKnight Hashemi, 'A balancing act: The revised rules of access to the ICRC Archives reflect multiple stakes and challenges', *International Review of the Red Cross*, Vol. 100, Nos. 907/908/909, 2018, pp. 373–394.

¹⁰² These conflicts include: the Six-Day War between Israel and Egypt, Syria, Jordan, and Iraq in June 1967 and the conflicts between Armenia and Azerbaijan (period covered: 1988–1994), Eritrea and Ethiopia (1998–2000), India and Pakistan (period covered: 1970–1971), Iran and Iraq (1980–1988), Russia-Georgia (2008), and the international armed conflict between the US-led coalition and Iraq (2003–2004). Other conflicts in which the ICRC visited prisoners of war include, for example, the 1991 First Gulf War and the international armed conflict in the Democratic Republic of the Congo (1998–2002).

¹⁰³ What follows is only a summary of the issues raised by these articles. For more detailed commentaries on these provisions, see Aust, pp. 205–226, Gardiner, 2015, Sinclair, pp. 114–158, and the sections on Articles 31–32 in Corten/Klein, Dörr/Schmalenbach and Villiger.

¹⁰⁴ See e.g. ICJ, *Kasikili/Sedudu Island case*, Judgment, 1999, paras 18–20; *Application of the Genocide Convention case*, Merits, Judgment, 2007, para. 160; and ILC, Subsequent

- 76 The text below addresses how the methodology has been applied to the interpretation of the Conventions, in particular the Third Convention.
- 77 Pursuant to Article 31 of the Vienna Convention on the Law of Treaties, a treaty must be interpreted ‘in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’. Although this rule of interpretation has different elements, which are examined under separate headings below, the interpretation itself must combine all the elements.¹⁰⁵
- 78 The obligation to interpret the terms of a treaty in good faith flows from the general obligation to respect treaty obligations in good faith, known under the Latin maxim of *pacta sunt servanda* (‘agreements must be honoured’).¹⁰⁶

2. Ordinary meaning of the terms

- 79 The ordinary meaning of most of the terms in the Conventions can easily be ascertained. They tend to be written in plain language and provide significant details in the provisions themselves (see e.g. Articles 25–28 of the Third Convention).
- 80 In order to achieve their objectives, the Conventions were drafted in such a way that they should easily be understood by soldiers and their commanders, as well as by civilians. The Conventions provide for their study to be included in programmes of military instruction,¹⁰⁷ and for the Third Convention to be posted in its entirety in prisoner-of-war camps, ‘in the prisoners’ own language, at places where all may read [it]’.¹⁰⁸ The purpose is for prisoners of war to be able to read the Convention and to be made fully aware of their rights under the Convention during their internment.
- 81 However, as practice in the application and interpretation of the Conventions over the past seven decades has shown, the meaning of the Conventions’ terms is not always clear or may give rise to a need for further interpretation. Where necessary, this Commentary determines the ordinary meaning of terms with reference to authoritative, standard English

agreements and subsequent practice in relation to the interpretation of treaties, Conclusion 2.1 (adopted on second reading), *Report of the International Law Commission on the work of its seventieth session*, UN Doc. A/73/10, 2018, p. 13.

¹⁰⁵ See ILC, *Yearbook of the International Law Commission*, Vol. II, 1966, p. 220, paras 9–10; subsequent agreements and subsequent practice in relation to the interpretation of treaties, Conclusion 2.5 (adopted on second reading), *Report of the International Law Commission on the work of its seventieth session*, UN Doc. A/73/10, 2018, p. 13; Gardiner, 2015, pp. 31–32; and Aust, p. 208.

¹⁰⁶ Vienna Convention on the Law of Treaties (1969), Article 26. For more details, see Gardiner, 2015, pp. 167–181.

¹⁰⁷ First Convention, Article 47; Second Convention, Article 48; Third Convention, Article 127; and Fourth Convention, Article 144.

¹⁰⁸ Third Convention, Article 41. Similarly, the Fourth Convention needs to be posted inside camps for civilian internees; see Fourth Convention, Article 99.

dictionaries, such as the *Concise Oxford English Dictionary*,¹⁰⁹ or legal dictionaries such as *Black's Law Dictionary*.¹¹⁰

- 82 Although the updated Commentary has been drafted in English, the authors have consistently consulted and compared it with the French version of the Convention, which is equally authentic.¹¹¹ Where divergences between the two versions appear to exist, the Commentary proposes an interpretation which reconciles both versions.¹¹² To ascertain the meaning of the terms in the French version of the Convention, the authors consulted authoritative, standard French dictionaries, such as *Le Petit Robert* or *Le Petit Larousse*.¹¹³

3. Context

- 83 Pursuant to Article 31(1) of the Vienna Convention on the Law of Treaties, in order to determine the ordinary meaning to be given to the terms of a treaty, those terms have to be placed 'in their context'. According to Article 31(2), the context to be considered for treaty interpretation comprises not only the text of the treaty, but also its preamble and annexes.
- 84 The Third Convention has five annexes: Annex I: Model Agreement concerning Direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick Prisoners of War (see Article 110); Annex II: Regulations concerning Mixed Medical Commissions (see Article 112); Annex III: Regulations concerning Collective Relief (see Article 73); Annex IV: Model identity card (see Article 4), capture card (see Article 70), correspondence card and letter (see Article 71), notification of death (see Article 120) and repatriation certificate (see Annex II, Article 11); and Annex V: Model Regulations concerning Payments sent by Prisoners to their Own Country (see Article 63). These annexes are referred to where relevant in the commentary on a particular provision.¹¹⁴
- 85 The context also comprises the structure of the Conventions, their titles, the chapter headings and the text of the other articles in the same Convention, as well as in the other three Conventions.¹¹⁵ The Final Act and the annexed 11 resolutions adopted by the 1949 Diplomatic Conference of Geneva are also

¹⁰⁹ *Concise Oxford English Dictionary*, 12th edition, Oxford University Press, 2011.

¹¹⁰ Bryan A. Garner (ed.), *Black's Law Dictionary*, 11th edition, Thomson Reuters, 2019.

¹¹¹ See Third Convention, Article 133, and Vienna Convention on the Law of Treaties (1969), Article 33.

¹¹² For further details, see the commentary on Article 133, section B.2.

¹¹³ See *Le Petit Robert de la Langue Française*, 1989, and *Le Petit Larousse*, Larousse, Paris, 2008.

¹¹⁴ See, most notably, the commentaries on Articles 4, 63, 70, 71, 73, 110, 112 and 120.

¹¹⁵ On the structure of the Convention, see section A.4. See e.g. the commentary on Article 87, para. 3673, referring to its placement in the Convention as context for the interpretation of the Second Convention.

considered to be part of the context for the purposes of interpretation of these respective treaties.¹¹⁶

- 86 In the case of the Conventions, the titles provided in the margins (known as 'marginal titles') are neither part of the text nor of the context because they were established after the Diplomatic Conference by the depositary, the Swiss Federal Council. This was done for ease of reference, as the articles of the Conventions have no titles, unlike the articles of the Protocols.¹¹⁷ In the present Commentary, the marginal titles of some articles have been slightly adapted to better identify their subject matter.

4. Object and purpose

- 87 Strictly speaking the object of a treaty may be said to refer to the rights and obligations stipulated by the treaty,¹¹⁸ while the purpose refers to the aim which is to be achieved by the treaty provisions.¹¹⁹ However, the phrase 'object and purpose' is used as 'a combined whole'.¹²⁰ Thus, a treaty's object and purpose is said to refer to its 'raison d'être',¹²¹ its 'fundamental core'¹²² or 'its essential content'.¹²³
- 88 Consideration in good faith of the object and purpose will ensure the effectiveness of a treaty's terms:

When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation be adopted.¹²⁴

As can be seen from this quote, and as recognized by the International Court of Justice, a treaty may have several objects and purposes.¹²⁵ A usual place to look

¹¹⁶ See Aust, p. 211; Gardiner, 2015, p. 86; Sinclair, p. 129; and Villiger, p. 430.

¹¹⁷ See Marginal Headings (or Titles of Articles) Established by the Swiss Federal Political Department, *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. I, Part III.

¹¹⁸ Reuter, p. 186, para. 283; see also Buffard/Zemanek, pp. 331–332.

¹¹⁹ Buffard/Zemanek, pp. 331–332.

¹²⁰ Villiger, p. 427, with further references; Gardiner, 2015, pp. 212–213 ('a composite item'); David S. Jonas and Thomas N. Saunders, 'The Object and Purpose of a Treaty: Three Interpretive Methods', *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 3, May 2010, pp. 565–609, at 578 ('a unitary concept').

¹²¹ ICJ, *Reservations to the Genocide Convention*, Advisory Opinion, 1951, para. 23.

¹²² Alain Pellet, 'Article 19. Formulation of reservations', in Corten/Klein, pp. 405–488, at 450–451.

¹²³ David S. Jonas and Thomas N. Saunders, 'The Object and Purpose of a Treaty: Three Interpretive Methods', *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 3, May 2010, pp. 565–609, at 576.

¹²⁴ ILC, *Yearbook of the International Law Commission*, Vol. II, 1966, p. 219, para. 6. See also ICJ, *Territorial Dispute case (Libya v. Chad)*, Judgment, 1994, para. 51: in international law, *effet utile* (useful effect) is regarded as 'one of the fundamental principles of interpretation of treaties'.

¹²⁵ ICJ, *Morocco case*, Judgment, 1952, p. 196. See also Villiger, p. 427, para. 11; Mark E. Villiger, *Customary International Law and Treaties*, Martinus Nijhoff Publishers, Dordrecht, 1985, pp. 321–322; Gardiner, 2015, p. 214 ('sometimes there seems no particularity in distinguishing

for the object and purpose of a treaty is its preamble.¹²⁶ In the case of the Geneva Conventions, the preambles are very short and provide only limited guidance, contrary to the Additional Protocols which have more substantial preambles.¹²⁷ However, beyond the preambles, the whole text of the Conventions, including the titles and annexes, has to be taken into account in ascertaining their object and purpose.¹²⁸

- 89 The overall object and purpose of the Third Convention is to ensure that prisoners of war are humanely treated at all times, while allowing belligerents to intern captured enemy combatants to prevent them from returning to the battlefield. Several provisions in the Convention flow directly from the imperative of humane treatment.¹²⁹ A number of other provisions provide more detail on how to comply with this imperative, for example in the rules on labour, financial resources and relations with the exterior and with the authorities. In addition, the rules on penal and disciplinary sanctions allow the Detaining Power to pursue justice and maintain order and security in a camp while ensuring humane treatment and a fair trial. Some provisions have a specific aim related to the overarching object and purpose, such as those on the honourable treatment of the dead¹³⁰ and those aimed at preventing prisoners from going missing.¹³¹ A number of provisions are intended to ensure respect for the Convention through its promotion, implementation and enforcement.¹³²
- 90 It should be recalled that common Article 3 provides the Third Convention, and the other Conventions, with an additional object and purpose, as it serves to protect persons not or no longer participating in hostilities, including persons deprived of liberty, in situations of non-international armed conflict.
- 91 The balance between humanitarian considerations, on the one hand, and military necessity, on the other, is a hallmark of international humanitarian law. This balance is reflected in the text of the Conventions adopted by the Diplomatic Conference of 1949.

between the object and purpose of the treaty and the purpose of particular provisions'); Sinclair, p. 130; and Fitzmaurice, p. 228. But see Jan Klabbers, 'Some Problems Regarding the Object and Purpose of Treaties', *Finnish Yearbook of International Law*, Vol. 8, 1997, pp. 138–160, at 152–153 (potential problems of admitting arguments based on object and purpose of individual provisions).

¹²⁶ ICJ, *Morocco case*, Merits, Judgment, 1952, p. 196; see also Fitzmaurice, p. 228, and Sinclair, pp. 125–126.

¹²⁷ For more details, see the commentary on the Preamble.

¹²⁸ See Gardiner, 2015, p. 213; Fitzmaurice, p. 228; and Buffard/Zemanek, p. 332.

¹²⁹ See, in particular, Articles 12–38.

¹³⁰ Article 120.

¹³¹ Articles 17, 70 and 122–123.

¹³² Articles 126–132.

5. Additional elements of interpretation

92 Pursuant to Article 31(3) of the Vienna Convention on the Law of Treaties, together with the context, the interpretation provided in the Commentary also has to take into account:

- (a) any subsequent agreement between the Parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the Parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the Parties.

Items (b) and (c) are particularly important considerations when interpreting the Geneva Conventions. It is important to ascertain the subsequent practice in the application of the Conventions which has accumulated over the decades since their adoption.

93 Subsequent practice that does not fulfil the criteria of this provision, i.e. to establish the agreement of the Parties regarding the interpretation of a treaty, may still be relevant as a supplementary means of interpretation under Article 32.¹³³ This consists of conduct by one or more Parties in the application of the treaty after its conclusion.¹³⁴ The weight of such practice may depend on its clarity and specificity, as well as its repetition.¹³⁵ The seven decades since the adoption of the Geneva Conventions have seen the development of significant practice in their application, which is particularly useful in this respect. The research in the ICRC archives has been very valuable in identifying such practice.

94 Other relevant rules of international law include customary humanitarian law and the three Additional Protocols, as well as other relevant treaties of international law, including international criminal law and human rights law where applicable, and the law of State responsibility. Some of these latter bodies of law were still in their infancy when the Geneva Conventions were adopted in 1949 but have grown significantly since then. As stated by the International Court of Justice, 'an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation'.¹³⁶

¹³³ ILC, Subsequent agreements and subsequent practice in relation to the interpretation of treaties, Conclusion 2.4 (adopted on second reading), *Report of the International Law Commission on the work of its seventieth session*, UN Doc. A/70/10, 2018, p. 13.

¹³⁴ *Ibid.* Conclusion 4.3 (provisionally adopted), p. 12.

¹³⁵ *Ibid.* p. 15.

¹³⁶ ICJ, *Namibia case*, Advisory Opinion, 1971, para. 53. For further details, see also ILC, Conclusions of the work of the Study Group on Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law, reproduced in *Report of the International Law Commission on the work of its fifty-eighth session*, UN Doc. A/61/10, 2006, Chapter XII, pp. 413–415, para. 251(17)–(23).

- 95 It is important to note that treaties other than the Conventions themselves are referred to in the Commentaries on the understanding that they apply only if all the conditions relating to their geographic, temporal and personal scope of application are fulfilled. In addition, they apply only to States that have ratified or acceded to them.¹³⁷

a. International criminal law

- 96 With respect to international criminal law, the growing body of case law from the various international criminal courts and tribunals, as well as national courts, illustrates the way in which identical or similar concepts and obligations of humanitarian law have been applied and interpreted for the purpose of assessing individual criminal responsibility. To the extent that this is relevant for the interpretation of the Conventions, this has been examined.
- 97 For example, the 1979 International Convention against the Taking of Hostages has become a starting point for the interpretation of the notion of the taking of hostages. This is also borne out by subsequent practice, e.g. with the inclusion of the war crime of hostage-taking in the 1998 ICC Statute, the definition in the 2002 ICC Elements of Crimes, and case law.¹³⁸
- 98 That said, it is important to underscore that a humanitarian treaty obligation may be broader than the criminalized parts of it in a rule contained in an instrument of international criminal law. The humanitarian treaty obligation exists independently of the rule of international criminal law on which the case law is founded. The content of the obligation may therefore not be identical in both bodies of law and differences are pointed out wherever they exist.

b. International human rights law

- 99 With respect to the relationship between humanitarian law and human rights law, it is widely recognized that human rights law provisions applicable in armed conflict complement the protection afforded by humanitarian law.¹³⁹
- 100 The interplay between humanitarian and human rights law is such that in some cases both legal regimes will apply simultaneously, with determinations on the exact nature of their relationship having to be made on a case-by-case

¹³⁷ This is without prejudice to the application of customary international law (which may at times, in part or in entirety, correspond to specific treaty provisions).

¹³⁸ For details, see the commentary on Article 3, section G.3.

¹³⁹ See e.g. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, para. 106; and *Armed Activities on the Territory of the Congo case*, Judgment, 2005, paras 215–220. See also ICRC, *Handbook on International Rules Governing Military Operations*, ICRC, Geneva, 2013, p. 67; and Cordula Droegge, 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', *Israel Law Review*, Vol. 40, No. 2, Summer 2007, pp. 310–355, and 'Elective affinities? Human rights and humanitarian law', *International Review of the Red Cross*, Vol. 90, No. 871, September 2008, pp. 501–548.

basis depending on the circumstances at hand. The interface of humanitarian and human rights law remains a complex issue that will undoubtedly be subject to evolution and clarification going forward. Having this in mind, the Commentaries do not purport to describe or analyse possible interactions between every rule of the Conventions and human rights law. However, where relevant, the Commentaries assess the relationship on a case-by-case basis.

- 101 As a result, international human rights law has been referred to in the Commentaries for a limited set of purposes. Reference has been made to human rights law where relevant to interpret shared concepts (e.g. cruel, inhuman and degrading treatment). This does not mean that human rights law and interpretations can be transposed mechanically to humanitarian law provisions, and differences have been pointed out where relevant. For instance, ICTY case law and the ICC Elements of Crimes have interpreted the notion of torture to be wider in humanitarian law than in the definition contained in the 1984 Convention against Torture.¹⁴⁰
- 102 References to human rights instruments have also been included to provide practitioners with further information on a given topic, when such instruments contain useful clarification or guidance. This may be relevant for the Third Convention, which deals, among other things, with conditions of detention, treatment and judicial guarantees in criminal proceedings against prisoners of war, given that human rights law and standards on these issues have developed significantly since the adoption of the Conventions. References to human rights law and standards must nevertheless be read with due regard to the particular context and to the specificities of detention in armed conflict. This Commentary focuses on interpreting the provisions of the present Convention, and not those of human rights instruments.
- 103 When both the Third Convention and human rights law regulate a particular issue, a comparison between their provisions may reveal certain differences. In such cases, it is necessary to determine whether the difference amounts to an actual conflict between the norms in question. If there is no conflict, the Commentary has attempted to interpret the different norms with a view to harmonization. An example is the notion of humane treatment under humanitarian and human rights law.¹⁴¹
- 104 In the event of a real conflict between the respective norms, resort must be had to a principle of conflict resolution such as *lex specialis derogat legi generali*, by which a more specific legal norm takes precedence over a more general one. The clearest example of such a conflict is the fact that humanitarian law provides for the internment of enemy personnel who qualify as prisoners of war under the Third Convention based solely on that status and without

¹⁴⁰ For details, see the commentaries on Article 3, section G.2, and on Article 130, section D.2.a.

¹⁴¹ See Third Convention, Article 13, and International Covenant on Civil and Political Rights (1966), Article 10(1).

court review of the lawfulness of internment.¹⁴² On this particular point, humanitarian law differs fundamentally from international human rights law.¹⁴³ In armed conflict, the specific regime for prisoners of war under humanitarian law takes precedence on this point.

- 105 Lastly, human rights law has been referred to in this Commentary when it was believed useful, in certain cases, to provide a reminder of the way in which the application of the Third Convention may be affected by international human rights obligations. An example is the death penalty.

c. The Additional Protocols

- 106 A special issue is the relationship between the Geneva Conventions of 1949 and the Additional Protocols of 1977 and 2005. The original Commentaries on the Conventions were drafted prior to the adoption of the Additional Protocols. The updated Commentaries aim to provide the clearest picture of the content of the obligations set forth in each article of the Conventions, in the light of the obligations for States that are party to the Additional Protocols.
- 107 Therefore, the updated Commentaries indicate, where relevant, the impact of relevant Protocol rules on the interpretation of the Conventions. The Commentaries on the Additional Protocols will indicate in more detail how a Protocol rule has altered, supplemented and/or reinforced a related rule in the Conventions. For example, the supplementary provisions in relation to competent tribunals in Article 45 of Additional Protocol I are discussed in relation to the competent tribunals provided for in Article 5(2) of the Third Convention.¹⁴⁴

d. Customary international humanitarian law

- 108 Another issue is the relationship between treaty law and customary humanitarian law. The Geneva Conventions have been ratified by 196 States and are generally considered to reflect customary law.¹⁴⁵ Nevertheless, references have been made to relevant rules of customary international humanitarian law as identified by international courts or other bodies, or from the 2005 ICRC study

¹⁴² Article 21. See also ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011, p. 17.

¹⁴³ See International Covenant on Civil and Political Rights (1966), Article 9(4) ('Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.'). See also Sassòli, pp. 384 and 394.

¹⁴⁴ See the commentary on Article 5, para. 1131. For further examples, see the commentaries on Article 23, paras 2025–2026, and on Article 120, paras 4605 and 4613, analysing the impact of Article 34 of Additional Protocol I on the interpretation of the obligation to mark and maintain graves.

¹⁴⁵ See e.g. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, paras 79 and 82; and Eritrea-Ethiopia Claims Commission, *Prisoners of War, Eritrea's Claim*, Partial Award, 2003, para. 40, and *Prisoners of War, Ethiopia's Claim*, Partial Award, 2003, para. 31.

on customary humanitarian law, in situating a provision of the Conventions in the general context of international law.¹⁴⁶

- 109 However, the updated Commentaries do not seek to determine for each provision whether it amounts to customary law, because this is beyond their scope and, as noted, the requirements of the Conventions are generally considered to be customary. Therefore, the absence of a reference to the customary status of a provision should not be interpreted as meaning that that provision is not part of customary international law; the issue was simply not examined as part of updating the Commentaries.

e. Law of State responsibility

- 110 The relevant legal framework also includes the rules of international law concerning the responsibility of States for internationally wrongful acts.¹⁴⁷ These secondary rules of international law establish (1) the general conditions for States to be considered responsible for violations of primary rules of international law (such as those laid down in the Third Convention) and (2) the legal consequences which flow from such violations.¹⁴⁸
- 111 With respect to the general conditions for State responsibility, it is a long-standing rule of customary international law that each State is responsible for violations committed by its armed forces.¹⁴⁹ Article 12 reaffirms this rule in the context of the present Convention by providing that the Detaining Power is responsible for the treatment given to the prisoners of war in its hands.¹⁵⁰ Thus, the Detaining Power is responsible for compliance with all obligations owed to prisoners of war under the Convention, irrespective of which specific persons are entrusted with the custody of the prisoners.¹⁵¹
- 112 Although the law of State responsibility recognizes several 'circumstances precluding wrongfulness',¹⁵² these may not be relied upon to excuse non-compliance with the basic rules of humanitarian law.¹⁵³ In addition, recourse

¹⁴⁶ See also Agnieszka Jachec-Neale, 'Status and treatment of prisoners of war and other persons deprived of their liberty', in Elizabeth Wilmshurst and Susan Breau (eds), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge University Press, 2007, pp. 302–336.

¹⁴⁷ See Draft Articles on State Responsibility (2001).

¹⁴⁸ *Ibid.* General commentary, para. 1.

¹⁴⁹ Hague Convention (IV) (1907), Article 3; Additional Protocol I, Article 91; ICRC Study on Customary International Humanitarian Law (2005), Rule 149.

¹⁵⁰ See, further, the commentary on Article 12, section C.2.

¹⁵¹ See also the commentary on Article 12, para. 1514. See also the commentary on Article 131, para. 5297.

¹⁵² Draft Articles on State Responsibility (2001), Articles 20–25.

¹⁵³ *Ibid.* commentary on Article 26, para. 4 ('circumstances precluding wrongfulness ... do not authorize or excuse any derogation from a peremptory norm of general international law') and *ibid.* commentary on Article 40, para. 5 (considering that it is 'generally accepted' that 'the basic rules of international humanitarian law applicable in armed conflict' are of a peremptory character). For the view that all rules in the Geneva Conventions qualify as peremptory norms, see e.g. Egon Schwelb, 'Some Aspects of International *Jus Cogens* as Formulated by the International Law Commission', *American Journal of International Law*, Vol. 61, No. 4, October 1967, pp. 946–975, at 956–957; Condorelli/Boisson de Chazournes, pp. 33–34; and

to circumstances precluding wrongfulness with respect to violations of the Convention is to a large extent excluded on account of the duty provided for in common Article 1 to respect the Convention 'in all circumstances'.¹⁵⁴ Thus, for example, a State cannot claim that a scarcity of resources makes it impossible to comply with its obligations under the Convention;¹⁵⁵ rather it must take all reasonable measures to ensure that it complies with those obligations.¹⁵⁶

113 As far as the legal consequences of State responsibility are concerned, a State's failure to comply with its primary obligations under the Convention triggers its secondary obligations under the law of State responsibility, which include, in particular, the obligations of cessation and reparation.¹⁵⁷

114 The State must, first, cease its wrongful conduct, if it is continuing.¹⁵⁸ For example, a State's failure to provide prisoners of war with sufficient food violates the primary rule found in Article 26 and triggers the secondary obligation to immediately put an end to that violation through any appropriate measures available to the State.¹⁵⁹ If the State is unable to secure the necessary resources to resume compliance with its primary duties, appropriate measures could include requesting or accepting assistance from other States or from an impartial humanitarian organization such as the ICRC; transferring the prisoners to another Power, subject to Article 12; or ultimately releasing and repatriating them.¹⁶⁰

115 Second, the responsible State must make full reparation for the injury caused by the violation.¹⁶¹ Reparation may take the form of restitution, compensation or satisfaction, either singly or in combination.¹⁶² A Detaining Power may thus be liable to pay compensation for failing to properly care for prisoners of war in violation of the Third Convention.¹⁶³ In practice, reparation related to

Alexander Orakhelashvili, *Peremptory Norms in International Law*, Oxford University Press, 2006, p. 90. See also the commentary on common Article 1, fn. 86.

¹⁵⁴ See, further, the commentary on common Article 1, paras 223–224.

¹⁵⁵ See Eritrea-Ethiopia Claims Commission, *Prisoners of War, Eritrea's Claim*, Partial Award, 2003, para. 138 ('scarcity of finances and infrastructure cannot excuse a failure to grant the minimum standard of medical care required by international humanitarian law') and *Prisoners of War, Ethiopia's Claim*, Partial Award, 2003, para. 125 ('scarcity of finances and infrastructure cannot excuse a failure to grant the minimum standard of medical care required by international humanitarian law').

¹⁵⁶ See e.g. the commentaries on Article 15, paras 1720–1721, and Article 26, para. 2119.

¹⁵⁷ Draft Articles on State Responsibility (2001), Articles 30(a) and 31(1).

¹⁵⁸ *Ibid.* Article 30(a); ICJ, *Jurisdictional Immunities of the State case*, Judgment, 2012, para. 137.

¹⁵⁹ See, further, the commentary on Article 26, para. 2119.

¹⁶⁰ See also the commentaries on Article 9, para. 1357; on Article 12, para. 1526; on Article 15, para. 1721; and on Article 26, para. 2119.

¹⁶¹ Draft Articles on State Responsibility (2001), Article 31, and ICRC Study on Customary International Humanitarian Law (2005), Rule 150. See also the commentary on Article 131.

¹⁶² Draft Articles on State Responsibility (2001), Article 34. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2000), paras 19–23 (listing, additionally, rehabilitation and guarantees of non-repetition as possible forms of reparation).

¹⁶³ See e.g. Peace Treaty for Japan (1951), Article 16 (undertaking to 'indemnify those members of the armed forces of the Allied Powers who suffered undue hardships while prisoners of war of Japan'); Canada, *LOAC Manual*, 2001, p. 10-3, para. 1014 ('[f]ailure to properly care for PWs may make that power liable to pay compensation'); Netherlands, *Military Manual*, 2005, para. 710 ('If a prisoner of war is not properly treated, the captive may claim payment of compensation

international armed conflict has most often been provided in the form of compensation from the responsible State to the State whose nationals have suffered harm, with the latter deciding on the modes of its disbursement at the domestic level.¹⁶⁴ Reparation has occasionally also been provided directly to individuals for violations of humanitarian law on the basis of mechanisms set up by inter-State agreements, via unilateral State acts or through claims made by individuals in domestic courts.¹⁶⁵

f. Other relevant treaties

- 116 In the context of the Third Convention, several treaties in other areas of international law are also relevant. These include treaties in the area of disability law, health law, labour law and private international law. For further details, see the commentaries concerned.¹⁶⁶

6. Special meaning of terms

- 117 According to Article 31(4) of the Vienna Convention on the Law of Treaties, 'a special meaning shall be given to a term if it is established that the Parties so intended'. With respect to the Third Convention, this rule is relevant, for example, to the definition of prisoner of war, which is specifically provided under humanitarian law and is not the same as the ordinary meaning of a prisoner under domestic law. The categories of persons entitled to prisoner-of-war status are carefully set out in Article 4 of the Convention.

from the detaining power.'). UN Compensation Commission, *Report and Recommendations made by the Panel of Commissioners concerning Part One of the Second Instalment of Claims for Serious Personal Injury of Death (Category 'B' Claims)*, UN Doc. S/AC.26/1994/4, 15 December 1994, para. 14 (recommending compensation for claims by members of the Allied Coalition Armed Forces who were taken prisoner during coalition military operations against Iraq and who were subjected to torture and other forms of inhumane treatment while in captivity); Eritrea-Ethiopia Claims Commission, *Prisoners of War, Eritrea's Claim*, Partial Award, 2003, and *Prisoners of War, Ethiopia's Claim*, Partial Award, 2003 (awarding compensation related to the treatment of former prisoners of war by the two governments). On the work of this Commission and the determination of State responsibility, see Natalie Klein, 'State Responsibility for International Humanitarian Law Violations and the Work of the Eritrea-Ethiopia Claims Commission So Far', *German Yearbook of International Law*, Vol. 47, 2004, pp. 214–266.

¹⁶⁴ See Henckaerts/Doswald-Beck, commentary on Rule 150, pp. 537–541. See also Draft Articles on State Responsibility (2001), commentary on Article 36, para. 16 ('It is well established that a State may seek compensation in respect of personal injuries suffered by its officials or nationals, over and above any direct injury it may itself have suffered in relation to the same event.'), and Sanna, p. 1008 ('With respect to mistreatment of POWs, reparation is due to their parent state').

¹⁶⁵ See Henckaerts/Doswald-Beck, commentary on Rule 150, pp. 541–545. However, the ICJ considered that this was not a requirement under international law; see *Jurisdictional Immunities of the State case*, Judgment, 2012, para. 94.

¹⁶⁶ See the commentaries on Article 26, para. 2131 (2003 Framework Convention on Tobacco Control); on Article 30, fn. 33 (2006 Convention on the Rights of Persons with Disabilities); on Article 49, para. 2682 (1930 Forced Labour Convention); on Article 74, sections D (2012 Universal Postal Convention) and G.2 (2012 International Telecommunications Regulations); and on Article 120, para. 4543 (1961 Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions).

7. Preparatory work

- 118 According to Article 32 of the Vienna Convention on the Law of Treaties, 'recourse may be had' to the treaty's preparatory work and the circumstances of its conclusion in order to confirm the meaning resulting from the application of the general rule of interpretation, or to determine the meaning when the application of the general rule leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.
- 119 The formulation 'recourse may be had' gives the impression that recourse to the preparatory work is optional. In practice, however, most commentaries on treaties examine the preparatory work as a matter of standard research, and do not use it only in cases where the meaning is ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.¹⁶⁷
- 120 Indeed, it seems logical for a thorough examination of all the issues to look at the preparatory work even if the general rule of interpretation yields a satisfactory result. It also helps the commentator to understand 'the terms of the treaty in their context', which is a requirement under the general rule (see section C.3 above). Recourse to the preparatory work is particularly important when no recent practice on a topic can be found.
- 121 The preparatory work that has been examined in this Commentary is listed in the corresponding table of sources at the end of Volume II.

8. Absence of practice and desuetude

- 122 Certain provisions of the Third Convention do not seem to have been applied extensively in the past decades. However, the absence of practice in the application of a provision does not, in and of itself, lead to that provision falling into

¹⁶⁷ See e.g. Corten/Klein, Dörr/Schmalenbach, Villiger, Jiří Toman, *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol*, Dartmouth/UNESCO, Aldershot, 1996; Stuart Maslen (ed.), *Commentaries on Arms Control Treaties, Volume I: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, Oxford University Press, 2004; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, N.P. Engel, Kehl am Rhein, 2005; Manfred Nowak and Elizabeth McArthur (eds), *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008; Jiří Toman, *Commentary on the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, UNESCO Publishing, Paris, 2009; William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, 2010; Gro Nystuen and Stuart Casey-Maslen (eds), *The Convention on Cluster Munitions: A Commentary*, Oxford University Press, 2010; Andreas Zimmermann, Jonas Dörschner and Felix Machts (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford University Press, 2011; Bruno Simma, Daniel-Erasmus Khan, Georg Nolte and Andreas Paulus (eds), *The Charter of the United Nations: A Commentary*, 3rd edition, Oxford University Press, 2012; Christian J. Tams, Lars Berster and Björn Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, Beck/Hart/Nomos, Oxford, 2014; Andrew Clapham, Paola Gaeta and Marco Sassöli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, 2015; and Otto Triffterer and Kai Ambos (eds), *The Rome Statute of the International Criminal Court: A Commentary*, 3rd edition, Hart Publishing, Oxford, 2016.

desuetude. Desuetude means that a treaty rule is no longer applicable or has been modified, a conclusion that should not be reached lightly. It is subject to stringent conditions and requires the agreement, at least tacit, of the Parties or the emergence of an inconsistent rule of customary international law.¹⁶⁸ Although there have been developments in law and practice, as well as in technology, that influence the interpretation of the Third Convention, in the context of this Commentary no provision was found to have fallen into desuetude.

123 Examples of provisions in the Third Convention with no or only limited practice include:

- Articles 8 and 10 on Protecting Powers and their substitutes, which have rarely been used since 1949;
- Articles 11 and 132 on the conciliation and enquiry procedures, which have not been relied upon as such in recent conflicts;
- Article 57 in relation to prisoners working for private employers. The practice of using the labour of prisoners of war has decreased, and even more so the practice of allowing prisoners to work away from a camp;
- Article 61 on supplementary pay for prisoners of war. In international armed conflicts since 1949, this provision does not appear to have been resorted to;¹⁶⁹
- Article 75 regarding special means of transport for relief parcels. There has been no specific practice under this provision since 1949.

Yet these provisions continue to exist as valid treaty rules and must be applied where their conditions for application are fulfilled.

D. Structure of the commentaries

124 The commentary on each article begins with the text of the provision in question. For multiple-paragraph articles, paragraph numbers have been added for ease of reference. Any reservations and/or declarations at the time of publication are also noted.¹⁷⁰

125 The commentary itself is preceded by a table of contents, which serves as an outline of the issues addressed. It allows the reader to navigate easily within a commentary and to identify quickly which parts of a commentary may be most relevant. The basic structure of each commentary is as follows:

¹⁶⁸ Jan Wouters and Sten Verhoeven, 'Desuetudo', version of November 2008, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, paras 10–11, <http://www.mpepil.com>. For example, the current application of Article 41 of the Second Convention, like Article 38 of the First Convention, on the use of the distinctive emblems may be considered a rule that has been modified by a subsequent rule of customary international law, as well as by the tacit agreement of the High Contracting Parties. For further details, see the commentaries on Article 41 of the Second Convention and on Article 38 of the First Convention.

¹⁶⁹ See the commentary on Article 61, para. 2929.

¹⁷⁰ For reservations in force at the time of publication, see the commentaries on Articles 4, 10, 12, 85, 87, 100, 101 and 118. For more details on reservations, see the commentary on Article 137, section C.2.

- 126 *Introduction*: The introduction serves as an executive summary of the commentary on a given provision. It highlights the main issues covered and allows for a quick overview of what that provision deals with. Further details can be found in the discussion section of the commentary. In some cases, the introduction is merged with the next section on historical background.
- 127 *Historical background*: This section highlights the main phases in the development of a specific provision, rather than seeking to give an exhaustive account of the entire drafting history. The length of this part depends on the relevance of the historical background to the current understanding of the provision in question and the amount of change and development that took place over time. The footnotes in this section guide the reader to the necessary details.
- 128 Those elements of the drafting history that have a direct impact on the interpretation of a particular aspect of a provision are included in the discussion section.
- 129 For multiple-paragraph articles, such as common Article 3, this section focuses on the general historical background of the provision rather than on that of each paragraph. The historical background of a specific paragraph may then be set out in a separate section, or elements of it may be interwoven with the introduction or with the discussion of the paragraph.
- 130 *Discussion*: This section forms the core of each commentary. For single-paragraph articles, this section may be divided into thematic subsections. For multiple-paragraph articles, it is divided by paragraph and may have additional thematic subsections. The commentary outlines and explains the content of the provision. As noted, the Commentary follows the rules on interpretation set out in the Vienna Convention on the Law of Treaties. The precise content of the discussion section depends on the article under scrutiny, but in general the aims of this section include:
- providing an interpretation of the ordinary meaning of the text in the light of its context and the object and purpose;
 - setting out the practice in implementing a provision where this helps to clarify its scope and content;
 - analytically describing any interpretations of the article by international courts and tribunals;
 - indicating areas where the exact requirements of a rule are subject to debate;
 - setting forth the broad outlines, including references, of the most authoritative academic doctrine on the issue focusing on the main fault lines among diverging opinions;
 - indicating the ICRC position, if any, in relation to how the article should be interpreted and applied and the rationale for this position;
 - providing key elements for implementing the obligation from a practical perspective, both humanitarian and military;
 - describing briefly, where relevant, how the application in practice of a provision may affect women, men, girls and boys differently; and
 - indicating briefly, where relevant, whether a violation of a provision entails the individual criminal responsibility of the author under international law.

- 131 *Select bibliography*: When specific literature on the provision is available, a select bibliography is appended to the commentary. This includes the individual works cited, as well as further reading. The treaties, other documents, military manuals, national legislation, national case law and international case law referred to are referenced in full in the tables at the end of this Commentary.

Select bibliography

A. History of international humanitarian law and prisoners of war in general

- Al-Dawoody, Ahmed, 'Islamic law and international humanitarian law: An introduction to the main principles', *International Review of the Red Cross*, Vol. 99, No. 906, December 2017, pp. 995–1018.
- Bugnion, François, *The International Committee of the Red Cross and the Protection of War Victims*, ICRC/Macmillan, Oxford, 2003.
- Carvin, Stephanie, 'Caught in the Cold: International Humanitarian Law and Prisoners of War During the Cold War', *Journal of Conflict & Security Law*, Vol. 11, No. 1, 2006, pp. 67–92.
- Chesney, Robert M., 'Prisoners of War', version of October 2009, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, <http://www.mpepil.com>.
- Condorelli, Luigi and Boisson de Chazournes, Laurence, 'Quelques remarques à propos de l'obligation des Etats de "respecter et faire respecter" le droit international humanitaire "en toutes circonstances"', in Christophe Swinarski (ed.), *Etudes et essais sur le droit humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet*, ICRC/Martinus Nijhoff Publishers, The Hague, 1984, pp. 17–35.
- Esgain, Albert J. and Solf, Waldemar A., 'The 1949 Geneva Convention Relative to the Treatment of Prisoners of War: Its Principles, Innovations, and Deficiencies', *North Carolina Law Review*, Vol. 41, No. 3, 1963, pp. 537–596.
- Gillespie, Alexander, *A History of the Laws of War, Volume 1: The Customs and Laws of War with Regards to Combatants and Captives*, Hart Publishing, Oxford, 2011.
- Hingorani, Rup C., *Prisoners of War*, 2nd edition, Oceana Press, Dobbs Ferry, 1982.
- Kolb, Robert, 'Protecting Powers', in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, 2015, pp. 549–560.
- Krähenmann, Sandra, 'Protection of Prisoners in Armed Conflict', in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 3rd edition, Oxford University Press, 2013, pp. 359–411.
- Krammer, Arnold, *Prisoners of War: A Reference Handbook*, Praeger Security International, Westport, 2008.
- Levie, Howard S., *Prisoners of War in International Armed Conflict*, International Law Studies, U.S. Naval War College, Vol. 59, 1978.
- (ed.), *Documents on Prisoners of War*, International Law Studies, U.S. Naval War College, Vol. 60, 1979.
- Maia, Catherine, Kolb, Robert and Scalia, Damien, *La Protection des Prisonniers de Guerre en Droit International Humanitaire*, Bruylant, Brussels, 2015.

- Orcasitas Llorente, Luis, 'Los prisioneros de guerra en la conferencia de Ginebra de 1949 (Convenio III)', *Revista española de derecho internacional*, Vol. 3, 1950, pp. 473–500.
- Rasmussen, Gustav, *Code des prisonniers de guerre: Commentaire de la Convention du 27 juillet 1929 relative au traitement des prisonniers de guerre*, Levin & Munksgaard, Copenhagen, 1931.
- Rosas, Allan, *The Legal Status of Prisoners of War: A Study in International Humanitarian Law Applicable in Armed Conflicts*, Institute for Human Rights, Åbo Akademi University, Turku/Åbo, 1976, reprinted 2005.
- Scheipers, Sibylle (ed.), *Prisoners in War*, Oxford University Press, 2010.
- Smiley, Will, *From Slaves to Prisoners of War: The Ottoman Empire, Russia, and International law*, Oxford University Press, 2018.
- Sassòli, Marco, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, Cheltenham, 2019.
- Vance, Jonathan F. (ed.), *Encyclopedia of Prisoners of War and Internment*, 2nd edition, Grey House Publishing, Millerton, New York, 2006.
- Waltzog, Alfons, 'Commentaires sur la Convention relative au traitement des prisonniers de guerre du 27 juillet 1929', unpublished, available in the ICRC library, 1929.
- Zemmali, Ameer, *Combattants et prisonniers de guerre en droit islamique et en droit international humanitaire*, Pedone, Paris, 1997.

B. Treaty law and interpretation

- Abi-Saab, Georges, 'The specificities of humanitarian law', in Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC/Martinus Nijhoff Publishers, The Hague, 1984, pp. 265–280.
- Aust, Anthony, *Modern Treaty Law and Practice*, 3rd edition, Cambridge University Press, 2013, pp. 205–226.
- Buffard, Isabelle and Zemanek, Karl, 'The "Object and Purpose" of a Treaty: An Enigma?', *Austrian Review of International & European Law*, Vol. 3, 1998, pp. 311–343.
- Corten, Olivier and Klein, Pierre (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, Oxford University Press, 2011.
- Dörr, Oliver and Schmalenbach, Kirsten (eds), *Vienna Convention on the Law of Treaties: A Commentary*, Springer, Berlin, 2012.
- Fitzmaurice, Sir Gerald, 'The Law and Procedure of the International Court of Justice 1951–4: Treaty Interpretation and Other Treaty Points', *British Yearbook of International Law*, Vol. 33, 1957, pp. 203–293.
- Gardiner, Richard K., 'The Vienna Convention Rules on Treaty Interpretation', in Duncan B. Hollis (ed.), *The Oxford Guide to Treaties*, 2012, pp. 475–506.
- *Treaty Interpretation*, 2nd edition, Oxford University Press, 2015.
- O'Connell, Mary Ellen, 'Historical Development and Legal Basis', in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 3rd edition, Oxford University Press, 2013, pp. 1–42.
- Reuter, Paul, *Introduction to the Law of Treaties*, 2nd edition, Graduate Institute of International Studies, Geneva, 1995.
- Sinclair, Ian, *The Vienna Convention on the Law of Treaties*, 2nd edition, Manchester University Press, 1984.
- Villiger, Mark E., *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, Leiden, 2009.